United Nations A/HRC/37/9/Add.1

General Assembly

Distr.: General
23 February 2018
English
Original: Spanish

Human Rights Council
Thirty-seventh session
26 February–23 March 2018
Agenda item 6
Universal periodic review

Report of the Working Group on the Universal Periodic Review*

Guatemala

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

GE.18-02810 (E) 090318 090318

1802810

Please recycle

1. On 14 November 2017, the State of Guatemala submitted its third report under the universal periodic review, in which it informed the international community of the progress made in implementing the recommendations of previous reviews and the challenges faced by the State in its efforts to promote, respect and guarantee human rights in the country.

2. On this occasion, the Government reaffirms the commitment that it made on 14 November 2017 to cooperate with human rights monitoring mechanisms, in particular the Human Rights Council, in order to continue the dialogue on the progress and challenges that enable it to implement the recommendations made to the country through the universal periodic review. As a demonstration of this commitment, Guatemala has accepted 150 recommendations that complement or are aligned with different actions undertaken by State institutions.

3. Prior to addressing the recommendations that were noted, it should be pointed out that the State of Guatemala is organized on the basis of the separation of powers, which is one of the basic tenets of the rule of law. In that regard, the legislature is primarily responsible for creating laws, the judiciary for applying them and ruling on disputed cases brought before it and the executive for governing and running the country. This distribution of State power is intended to ensure that the different branches of government function efficiently, in a coordinated manner, under reciprocal restrictions, so that they each operate within the sphere of their competence and act as a brake on, or counterweight to, the activities of the other branches. For this reason, the recommendations noted are those that the legislature and the judiciary are responsible for implementing.

4. Some of the recommendations relate to issues that are still under discussion at a national level and on which there is currently no consensus among stakeholders. True to its role as a guarantor of human rights, the State is already taking measures in relation to those issues, as described in this document.

Steps taken in relation to the 55 recommendations noted

Death penalty

5. With regard to recommendations **7.1, 7.2, 7.3, 7.4, 7.5, 7.31, 7.32, 7.24, 7.25, 7.26, 7.27, 7.28, 7.29, 7.30, and 7.33**, the Constitutional Court, in dossier No. 5986-2016 of 24 October 2017, ruled to rescind the application of the death penalty against persons convicted of the following offences under the Criminal Code: parricide (art. 131), extrajudicial execution (art. 132 bis), abduction or kidnapping (art. 201), enforced disappearance (art. 201 ter) and killing the President or Vice-President of the Republic or the heads of other State bodies (art. 383). In addition, the death penalty for offences under the Anti-Narcotics Act has been removed from the legal system.

6. The decision of the Constitutional Court paves the way for full compliance with the American Convention on Human Rights, the International Covenant on Civil and Political Rights and the ruling of the Inter-American Court of Human Rights on violations that have occurred in this area.

Ratification of human rights instruments

7. In accordance with the competencies of State institutions in Guatemala, it is incumbent upon Congress to issue a specific decree approving the ratification of the international instruments that it accepts.

8. **Recommendations 7.6 and 7.7.** Before Congress approves, or otherwise, the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Government is consulting with, and gathering the opinions of, institutions involved in caring for children in relation to the ratification of this instrument.

9. **Recommendations 7.8, 7.9, and 7.10.** Ratification of the International Convention for the Protection of All Persons from Enforced Disappearances. In December 2007, the executive submitted to Congress bill No. 3736, which provides for the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance. The bill is supported by the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights, the Office of the Human Rights Ombudsman, the Public Prosecution Service, the Ministry of the Interior, the Ministry of Defence and the Ministry of Foreign Affairs. This process is ongoing.

Selecting national candidates for United Nations treaty body elections

10. **Recommendation 7.13.** In accordance with its principles, rules and practices, and in pursuit of peace, freedom, respect for, and the protection of human rights, the State of Guatemala puts forward candidates for election to treaty bodies in accordance with their capabilities and standing, taking into account the fact that they serve in a personal capacity and not on behalf of the State of Guatemala.

National Search Commission for Disappeared Persons

11. **Recommendations 7.14 and 7.15.** The approval process for the establishment of a national search commission for disappeared persons already has the support of the Committee on Public Finance and Currency and the Congressional Committee on Legislation and Constitutional Matters. Final approval remains pending.

Lesbian, gay, bisexual, transgender and intersex persons

12. **Recommendations 7.15, 7.16, 7.17, 7.18, 7.19 and 7.20.** Article 4 of the Constitution provides that all Guatemalans are free and equal in dignity and rights and, therefore, irrespective of the adoption of specific policies, each national institution is obliged to provide them with the services it is mandated to deliver.

13. **Recommendations 7.50 and 7.5.** Guatemala has made significant efforts to prevent, investigate and punish violations of the human rights of women, transgender and transsexual persons and to ensure access to justice for victims of such crimes. However, the judiciary and the Public Prosecution Service are responsible for investigating, prosecuting and punishing public offences in accordance with their competencies.

Consultations with indigenous peoples

14. **Recommendations 7.11, 7.12, 7.21 and 7.22.** The President has made it a priority to promote indigenous peoples' right to consultation, through the establishment of a State vision. In October 2016, the heads of the three branches of Government began the process of drafting the Procedural Guide to the Implementation of Consultations with Indigenous Peoples. This initiative, which was undertaken in an inclusive manner involving the Cabinet of Indigenous Peoples and over twenty public institutions, was finalized and adopted in July 2017.

15. The approval of the Guide represents an important step towards the full implementation of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and of a number of decisions, such as those issued by the Constitutional Court on 26 May 2017 in relation to dossiers 90-2017, 91-2017 and 92-2017 in the case of Oxec and Oxec II, in which the Court highlighted the need to implement the regulations on the right to consultation.

16. The consultation procedure established in the Guide includes the following eight phases: (1) a preparatory phase; (2) a meeting to establish trust; (3) the drafting of a consultation plan (pre-consultation); (4) the gathering of information on the measures in relation to which consultation is to take place; (5) analysis of the information gathered; (6)

intercultural dialogue; (7) conclusions and agreement; (8) finalization, including the drawing up of guarantees of compliance with the agreements.

Criminalization of the dissemination of ideas based on racial superiority or hatred

17. **Recommendation 7.23.** On 10 June 2014, through the Committee on Legislation and Constitutional Matters, Congress issued a favourable opinion on bill No. 4539, which provides for reforms to the Criminal Code and the addition of article 202 sexies on dissemination and incitement to racial discrimination. In accordance with the bill, punishments will be imposed on persons who disseminate and publicize ideas based on racial or ethnic hatred, incite others to racial discrimination, carry out acts of violence against any ethnic group or help to finance, promote or establish groups that promote ideas of racial or ethnic superiority".

Human rights defenders

18. **Recommendation 7.35.** As was stated on 14 November 2017, the State of Guatemala considers this recommendation not to be commensurate with the objectivity and impartiality with which the justice system operates in the country; the Government has respected the constitutional guarantees relating to freedom of thought (art. 35) and the freedom of activity of non-governmental organizations in their efforts to protect human rights.

Justice system

19. **Recommendations 7.36 and 7.38.** Guatemala is in the process of reforming its entire justice system. Constitutional reforms are being carried out with a view to strengthening that system and, in accordance with the Constitution, Congress must take responsibility for the matter and adopt the proposed reforms by a majority of two-thirds of the total number of deputies (arts. 277 and 280).

20. **Recommendation 7.37.** Decree No. 19-2009, the Act on Nominating Commissions, is aimed at developing the constitutional rules governing such commissions in order to regulate and establish mechanisms, procedures and specific goals for drawing up lists of candidates for public positions such as judges of the Supreme Court and the Court of Appeal, the Comptroller General, the Attorney General, the head of the Public Prosecution Service, the Human Rights Advocate and any other post designated by nominating commissions.

21. Nominating commissions are being established to ensure that the process of selecting and electing candidates is not at risk of being politicized or subject to conflicts of interest and to ensure the independence and impartiality of the judiciary in Guatemala.

22. **Recommendations 7.39 and 7.40.** The State of Guatemala does not have competence to decentralize the International Commission against Impunity in Guatemala for reasons owing to the latter body's structure and membership. In April 2016, the current Government asked the Secretary-General of the United Nations to renew and extend the mandate of the Commission until September 2019.

23. **Recommendation 7.41.** The executive respects the separation of powers and the Public Prosecution Service's role as an autonomous institution that undertakes criminal prosecutions and conducts investigations into publicly actionable offences. Likewise, it respects the competence of the judiciary, which is not subordinate to any other State body, to prosecute and punish perpetrators. It therefore takes note of the recommendation to speed up the progress of trials of the perpetrators of genocide and crimes against humanity.

Poverty

24. **Recommendation 7.42.** Note had been taken of this recommendation, as the words "consider the possibility" of establishing a universal basic income with a view to further reducing poverty and inequality levels do not take account of the actions that the Government is already carrying out, through different public policies, in order to reduce the poverty and inequality rates in the country.

Reproductive health

25. **Recommendations 7.43, 7.44, 7.45, and 7.46.** Although the State has taken note of the recommendations related to pregnancy among girls, it is important to bear in mind that articles 28 and 29 of Decree No. 9-2009, the Act against Sexual Violence, Exploitation and Trafficking in Persons, indicate that, in cases of rape or sexual assault, "***an offence is always committed*** if the victim is ***a person under 14 years of age*** or is a person with a cognitive or volitional impairment, even when no physical or psychological violence is employed".

26. In the face of the alarming levels of pregnancy among minors, and in order to ensure effective access to health care, health services and education programmes, a guide to comprehensive and differentiated care for pregnant girls under 14 years of age was developed in 2014. In addition, 478 health-care providers were trained in the use of the guide in 2017 and an inter-agency technical committee was established to follow up on the agreement signed, to monitor relevant cases and to improve the care system. The Technical Committee on Public Health Surveillance was set up to analyse and monitor cases of pregnancy in children under 14 years of age and to make decisions in that regard. A cooperation agreement, entitled "Prevention through Education 2016–2020", has been set up between the Ministry of Health and Social Welfare and the Ministry of Education. The plan associated with the agreement includes actions aimed at promoting comprehensive sex education and the prevention of teenage pregnancy. Priority has been given to 13 areas of health care in the different regions of the country.

27. **Recommendations 7.47, 7.52 and 7.55.** Article 137 of the Criminal Code provides only for "therapeutic abortion" (not punishable) in cases where it has been established that the purpose of the procedure is to protect the mother from danger and all the scientific and medical evidence supporting the desirability of the proceedings has been exhaustively reviewed. No distinction is made on the grounds of a person's physical or mental condition. Failure to comply with the above constitutes the offence of abortion in its various forms, as envisaged under articles 133–139 of the Code.

28. The State carries out actions such as the adoption of the protocol on therapeutic abortion in order to safeguard the lives and health of women. In cases of induced or forced abortion, the national health system is required to provide care for women who request it.

29. **Recommendation 7.53.** Specialized legal and psychosocial health services aimed at strengthening preventive, protective and rehabilitation measures for women and girl victims of sexual violence include a system for the provision of care to pregnant girls and adolescents, a protocol on the care of survivors of sexual violence, a national reproductive health programme, a strategy on comprehensive services for girls and women in the community, and a policy on working in coordination with midwives.

Public appointments

30. **Recommendations 7.48 and 7.49.** Congress is responsible for considering, analysing and approving bill No. 5389, submitted by the Supreme Electoral Tribunal on 27 November 2017, which contains a proposal to reform the Elections and Political Parties Act with the addition of the following paragraph: "the members of all party bodies shall include indigenous and non-indigenous women and men, on an equal basis, in accordance with the ethnic makeup of the electoral district in question.

31. The order shall alternate between women and men, so that a position occupied by a woman is followed by a position occupied by a man, or vice versa, and so on."

Disability

32. **Recommendation 7.54.** In August 2016, Congress met in a plenary session to hear bill No. 5125, which provides for the adoption of the Persons with Disabilities Act. The Congressional Commission on Disability has issued a favourable opinion on the bill.